

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY D. BERKLEY,

Defendant.  
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CASE NO. 1:10-CR-00204

MEMORANDUM

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In this criminal action, the Government filed indictment charging the Defendant with one count of possessing ammunition in violation of [18 U.S.C. § 922\(g\)\(1\)](#). [[Doc. 8](#).] On October 5, 2010, the Defendant withdrew his plea of not guilty and entered a plea of guilty to Count 1 of the indictment charging him with a violation of [18 U.S.C. § 922\(g\)\(1\)](#). [[Doc. 39](#).] The Court accepted that plea and at the opening of his sentencing hearing, the Court found the Defendant guilty of Count 1 of the indictment. However, during the course of the hearing, the Court found that the Defendant denied responsibility for the offense and effectively withdrew his guilty plea. Thus, under [Federal Rule of Criminal Procedure 11\(c\)\(5\)](#) the Court rejects the plea agreement, and the Court will allow the Defendant to withdraw his guilty plea under [Rule 11\(d\)\(2\)\(A\)](#) & [\(B\)](#). As the Defendant denies the factual basis underlying the plea, the Court finds that it is fair and just to allow this withdrawal. See [United States v. Goldberg](#), 862 F.2d 101, 103 (6th Cir. 1988). The Court also amends the record

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to note that it is no longer finding the Defendant guilty of Count 1 of the indictment. The Court sets this case for trial.

IT IS SO ORDERED.

Dated: December 27, 2010

s/ *James S. Gwin*  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE